

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Charmaine Rose Bassett, - Case No. 3:16-cv-2268
-
Plaintiff, - Toledo, Ohio
- September 20, 2016
v. - Hearing on Motion for
- Temporary Restraining
Toledo, Ohio Police Dept - Order
-
Defendant. -

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JACK ZOUHARY
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

For the Plaintiffs: Charmaine Rose Bassett
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(419) 720-2972
PRO SE

For the Defendants: City of Toledo - Department of Law
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Proceedings recorded by mechanical stenography,
transcript produced by notereading.

1 (Commenced at 9:11 a.m.)

2 THE COURT: We're here on case number

00:00:04 3 16-CV-2268 captioned Bassett v. Toledo, Ohio Police

00:00:11 4 Department.

00:00:13 5 Is Plaintiff, Charmaine Rose Bassett, in the

00:00:16 6 courtroom? Please, if you are, come forward and sit at

00:00:19 7 plaintiff's table.

00:00:20 8 MS. BASSETT: I was going to ask permission

00:00:22 9 to come on board.

00:00:24 10 THE COURT: You may -- not only may you have

00:00:26 11 permission; I'm ordering you to please come to, as my

00:00:29 12 deputy clerk previously asked you, to the table; because

00:00:32 13 otherwise, I won't hear from you.

00:00:36 14 MS. BASSETT: Thank you.

00:00:37 15 THE COURT: Thank you.

00:00:42 16 The record should reflect the Plaintiff is

00:00:44 17 now seated at plaintiff's table. Seated at defendant's

00:00:47 18 table on behalf of the Toledo, Ohio Police Department is

00:00:53 19 Jeff Charles and Adam Loukx and Sergeant William Bragg.

00:00:59 20 This matter is scheduled this morning with

00:01:02 21 the following docket history: The plaintiff is acting

00:01:08 22 pro se and has filed a Motion for a Temporary

00:01:12 23 Restraining Order; that is reflected on our docket as

00:01:16 24 document number 3. Subsequent to filing that motion the

00:01:21 25 Plaintiff also filed a Motion to Withdraw from Court for

00:01:26 1 Presentation to Grand Jury; that is document number 5.

00:01:32 2 The Defendant has opposed the Motion for
00:01:37 3 Temporary Restraining Order/Preliminary Injunction. The
00:01:42 4 Defendant has captioned that document as a Motion in
00:01:45 5 Opposition.

00:01:47 6 I'm going to ask the deputy clerk to clarify
00:01:50 7 that on the docket as not a motion; it is a Memorandum
00:01:53 8 in Opposition to.

00:01:56 9 I don't believe there's a separate motion
00:01:58 10 that the City has filed. Do I have that correct?

00:02:01 11 MR. CHARLES: That's correct, Your Honor.

00:02:03 12 THE COURT: Thank you.

00:02:07 13 I'm prepared to address the pending motions
00:02:11 14 by the Plaintiff, the two motions, document number 3 and
00:02:15 15 document number 5, this morning.

00:02:17 16 I do have a question of clarification for --
00:02:23 17 shall I call you Ms. Bassett?

00:02:26 18 MS. BASSETT: I, woman, Charmaine Rose. You
00:02:29 19 may call me Charmaine.

00:02:30 20 THE COURT: Charmaine, your document number
00:02:33 21 5, I need a clarification. Are you asking the Court to
00:02:40 22 withdraw your Motion for Temporary Restraining Order,
00:02:44 23 document number 3?

00:02:46 24 MS. BASSETT: What that was for was to put
00:02:49 25 it into a common law jurisdiction.

00:02:52 1 THE COURT: Well, you're in Federal Court
00:02:54 2 jurisdiction.

00:02:55 3 MS. BASSETT: I'm with common law. There's
00:02:57 4 a jural assembly in the State of Ohio that has common
00:03:01 5 law jury members.

00:03:02 6 THE COURT: Would you like to then withdraw
00:03:04 7 your motion in front of me and take your case to another
00:03:08 8 court? Is that what you're asking me to do?

00:03:11 9 MS. BASSETT: Well, what I'm asking is I'm
00:03:13 10 asking that we have our jural system combined.

00:03:17 11 THE COURT: Well, I'm asking you to give me
00:03:19 12 a yes or no to my question. My question is --

00:03:21 13 MS. BASSETT: No, I'm not withdrawing.

00:03:23 14 THE COURT: You're not withdrawing?

00:03:24 15 MS. BASSETT: No.

00:03:25 16 THE COURT: Okay.

00:03:25 17 MS. BASSETT: But I'm also not consenting to
00:03:28 18 this Judge that you want to assign to me. I'm
00:03:32 19 requesting a federal injunction to be moved to the
00:03:35 20 Court's dismissal of all charges with prejudice.

00:03:38 21 THE COURT: When you say "Judge" --

00:03:41 22 MS. BASSETT: Is this a court of record?

00:03:44 23 THE COURT: We can't talk over each other.

00:03:46 24 MS. BASSETT: I don't want to do that, Your
00:03:48 25 Honor.

00:03:48 1 THE COURT: Take a breath.

00:03:49 2 MS. BASSETT: I know.

00:03:51 3 THE COURT: It's okay. Everyone will have a
00:03:54 4 chance to speak at tables here. But I will not allow
00:03:57 5 either side to step on the vocal cords, if you will, of
00:04:01 6 the other side because then our court reporter can't get
00:04:03 7 it down, and I can't understand the dialog. So pause,
00:04:09 8 wait for a question, please.

00:04:10 9 And I think earlier you talked about a judge
00:04:13 10 that you wanted to assign the case to. You may have
00:04:17 11 been referring to the document that comes with every
00:04:22 12 case that's filed in federal court, and that's a
00:04:24 13 document asking if the parties wish to consent to having
00:04:29 14 a magistrate judge handle the case. And that's another
00:04:33 15 document that I see was filed by you, I believe
00:04:37 16 yesterday, late yesterday afternoon. And it's called an
00:04:42 17 Order of Reference. And I take it that you do not wish
00:04:46 18 to have this case transferred to the magistrate judge;
00:04:50 19 is that correct?

00:04:50 20 MS. BASSETT: I --

00:04:52 21 THE COURT: Yes or no?

00:04:53 22 MS. BASSETT: I do not consent to the judge.
00:04:55 23 Are we on the record right now? Is this a court of
00:04:58 24 record?

00:04:59 25 THE COURT: Yes. Seated in front of me is

00:05:01 1 my deputy clerk. Seated in front of her is the court
00:05:04 2 reporter.

00:05:04 3 MS. BASSETT: Thank you.

00:05:04 4 THE COURT: And yes, she is taking down
00:05:06 5 everything that is said, which, as I just earlier
00:05:09 6 indicated, is the reason why we can't talk over each
00:05:12 7 other.

00:05:12 8 So I would very much appreciate it -- and
00:05:15 9 this goes for both sides -- if I ask a question, I'd
00:05:18 10 like a yes or a no, or I don't know, whatever is
00:05:22 11 appropriate. And if I wish further explanation from
00:05:26 12 you, I will ask for it. If I don't, then I don't want
00:05:30 13 to hear another word. And that goes for this side as
00:05:34 14 well.

00:05:35 15 So the question I have is: The document that
00:05:39 16 you filed yesterday has writing on it, which I assume is
00:05:44 17 your writing. And again, it's a bit unclear to me, but
00:05:48 18 I want to clarify for the record whether you are
00:05:51 19 consenting to having this case heard by the magistrate
00:05:54 20 judge. Do you consent to have it heard by him; yes or
00:05:59 21 no?

00:06:00 22 MS. BASSETT: No.

00:06:00 23 THE COURT: Thank you very much. That's
00:06:02 24 what I suspected. But I want to make it clear for the
00:06:04 25 record.

00:06:05 1 Then the case is before me. I am prepared
00:06:08 2 to move forward on both the Motion for Temporary
00:06:11 3 Restraining Order and the Motion to Withdraw from Court.

00:06:17 4 Let's start with what I understand to be the
00:06:20 5 essential facts as presented in the papers filed with
00:06:24 6 the Court.

00:06:29 7 How many more people are we expecting?
00:06:31 8 Because the back looks pretty full.

00:06:37 9 UNIDENTIFIED SPEAKER: That's it.

00:06:38 10 THE COURT: As opposed to standing, if the
00:06:40 11 four of you want to sit in the jury box at the far end,
00:06:43 12 you may do so, where the CSO is pointing to.

00:06:43 13 UNIDENTIFIED SPEAKER: Thank you.

00:06:53 14 THE COURT: You're welcome.

00:06:58 15 As best as I can understand from the filings
00:07:02 16 that the Plaintiff has made with this Court, Plaintiff
00:07:09 17 claims to operate a branch of the -- I will spell this
00:07:15 18 for our reporter: O-k-l-e-v-u-e-h-a. How do you
00:07:21 19 pronounce that?

00:07:22 20 MS. BASSETT: Oklevueha.

00:07:24 21 THE COURT: -- Oklevueha Native American
00:07:27 22 Church, a nationwide religious group with what may be
00:07:31 23 charitably described as tenuous claims to legitimacy.

00:07:36 24 Toledo Police raided the church at its
00:07:38 25 location at 3344 Secor Road based on a search warrant

00:07:43 1 issued by Judge Tim Kuhlman of the Toledo Municipal
00:07:49 2 Court. That search warrant related to the sale of
00:07:52 3 marijuana and psilocybin. Also --

00:08:03 4 MS. BASSETT: For the record, I object,
00:08:05 5 because --

00:08:05 6 THE COURT: I'm sorry. I'm not done
00:08:07 7 speaking. And please do not speak unless the Court --
00:08:10 8 again, for both sides -- gives you permission.

00:08:13 9 MS. BASSETT: You're not allowed to object?

00:08:15 10 THE COURT: You may object after I'm done
00:08:16 11 speaking. I'll give you an opportunity to comment.

00:08:21 12 -- psilocybin, also known as magic
00:08:24 13 mushrooms, with hallucinogenic effects. I'm referring
00:08:29 14 now to Document 6-1. The police seized drug
00:08:33 15 paraphernalia and warned the occupants not to sell
00:08:36 16 narcotics. It's unclear from the papers filed whether
00:08:40 17 the Plaintiff herself was present during the search. I
00:08:50 18 believe that the claim here -- again, as best as I can
00:08:55 19 figure it out, the claim is that Plaintiff wishes to
00:08:59 20 enjoin the City of Toledo from enforcing drug laws of
00:09:03 21 the State of Ohio against the church. She claims the
00:09:07 22 earth-based sacraments; that is, the marijuana and
00:09:12 23 mushrooms, are part of their religious rites and
00:09:15 24 therefore protected by the First Amendment; the
00:09:18 25 Religious Freedom Restoration Act, also known as RFRA,

00:09:24 1 R-F-R-A; the Religious Land Use and Institutionalized
00:09:27 2 Persons Act, also known as RLUIPA; I and the United
00:09:35 3 Nations Declaration on the Rights of Indigenous Peoples.
00:09:39 4 That is a brief summary of what I see as the facts
00:09:45 5 stated in the papers filed before me.

00:09:48 6 I will also note at the outset that the
00:09:51 7 legal standard in determining whether this Court should
00:09:54 8 issue injunctive relief is fairly well set forth in the
00:09:58 9 case law, and there are four factors for this Court to
00:10:02 10 consider:

00:10:05 11 Number 1. Whether the movant -- that would
00:10:08 12 be the Plaintiff here -- has a strong likelihood of
00:10:10 13 success on the merits;

00:10:12 14 Number 2. Whether the movant would suffer
00:10:15 15 irreparable injury absent a stay or the issuance of an
00:10:21 16 injunction;

00:10:22 17 3. Whether granting the stay would cause
00:10:24 18 substantial harm to others;

00:10:27 19 And 4. Whether the public interest would be
00:10:30 20 served by granting the stay.

00:10:34 21 Sixth Circuit law indicates that these
00:10:36 22 factors are not prerequisites that must be met but
00:10:41 23 rather are interrelated considerations that must be
00:10:44 24 balanced together.

00:10:47 25 With that, I'll allow both sides to issue a

00:10:49 1 comment if it's relevant to what I just stated, and I'll
00:10:55 2 give Plaintiff the floor first.

00:10:58 3 MS. BASSETT: Okay. So what I was objecting
00:11:01 4 to is -- first off, I'm not withdrawing. And the other
00:11:09 5 thing is that I'm objecting because it's not relative to
00:11:15 6 this case because your First Amendment right in my
00:11:19 7 paperwork that I submitted shows Judge Scalia set a
00:11:23 8 federal precedent that said that nobody, a judge, a
00:11:28 9 jury, a cop, can decide what is or isn't in the church.
00:11:36 10 The individual gets to decide that. And we absolutely
00:11:38 11 are a church. We function as a church. We are
00:11:41 12 federally recognized. It even says on the search
00:11:44 13 warrant that they came into a church. And if you take a
00:11:46 14 look at the longer search warrant, it even says that I
00:11:50 15 wrote as a medicine woman. Okay. I'm also showing what
00:11:55 16 a medicine woman is. Because I think where a lot of
00:11:58 17 confusion comes in with indigenous medicine is they like
00:12:02 18 to separate the spiritual leader from the person that's
00:12:09 19 actually practicing the medicine when they're one and
00:12:11 20 the same. As a naturopathic doctor, as a holistic
00:12:15 21 doctor, as a medicine woman, as an indigenous practicing
00:12:19 22 person, we treat the body as a whole; body, mind, and
00:12:23 23 spirit. And all religions from the beginning of time
00:12:26 24 until the present spend time detoxing the body, spend
00:12:30 25 time rebuilding the body in preparation for the

00:12:32 1 ceremonies. And that's what Anyana-Kai is. We are a
00:12:36 2 detoxing church. And clearing out these toxins from
00:12:39 3 people's body, that gets them more in touch with their
00:12:43 4 spirit. And this is the whole premise that I'm standing
00:12:46 5 on the First Amendment right is the freedom of religion.
00:12:50 6 And this is my religion. And you can see a lot of
00:12:53 7 members here. We have hundreds of them that are
00:12:55 8 suffering presently because they are no longer getting
00:12:58 9 their earth-based medicines.

00:13:00 10 We've had the health store in town for 50
00:13:03 11 years. And this has been something that's my heart, my
00:13:06 12 soul, something that I've been doing my entire life. My
00:13:09 13 father was very much politically advanced trying to keep
00:13:13 14 our stance so that we can protect these rights. And
00:13:17 15 when I decided to become a church because I realized
00:13:20 16 that medicine really truly needs to get back to its
00:13:23 17 roots and through the indigenal makings, and that's why
00:13:27 18 I decided to open a Native American Church, so we can
00:13:30 19 combine all of that together. And eventually after we
00:13:32 20 do enough cleansing, then Linda and James Mooney come in
00:13:36 21 town, and we do Peyote; we do ceremony. We do ceremony
00:13:40 22 every day. We did a ceremony out front before we came
00:13:43 23 in here today. I did a ceremony before I sat down here.
00:13:46 24 My whole life we teach behaving as a God in all life
00:13:50 25 matters. We have projects where we go up and we clean

00:13:53 1 up Microcystin on the lake.

00:13:56 2 THE COURT: Can I have you pause a second,
00:13:58 3 give our court reporter's fingers projects little break.

00:14:03 4 MS. BASSETT: I talk very fast. I'll try to
00:14:05 5 slow down. I'm very nervous.

00:14:07 6 THE COURT: That's okay. Take your time. I
00:14:09 7 may interrupt you if I feel you're speeding along.

00:14:11 8 MS. BASSETT: That's fine. I know, I do
00:14:13 9 talk fast. And when I'm nervous I talk even faster.

00:14:23 10 THE COURT: Are you --

00:14:25 11 MS. BASSETT: I'm not done.

00:14:25 12 THE COURT: Okay.

00:14:26 13 MS. BASSETT: So what I was to -- for the
00:14:28 14 record, the only reason why I was objecting is because
00:14:31 15 you're coming after me individually. When this stated
00:14:34 16 clearly on the warrant --

00:14:34 17 THE COURT: Who is "you" coming after --

00:14:36 18 MS. BASSETT: The Police Department. And it
00:14:38 19 states clearly on the warrant that they were coming
00:14:42 20 after Oklevueha. Now you're coming after Charmaine
00:14:45 21 Bassett. So I'm just -- I'm sincerely confused because
00:14:47 22 this is a case -- my case that I'm placing forward is on
00:14:51 23 my First Amendment right, and that's to prove whether
00:14:56 24 we're a church or not. And that's what I'm standing on
00:14:58 25 is the First Amendment rights that we are a church. And

00:15:01 1 I don't understand -- let me take a second. Let me just
00:15:07 2 take a deep breath.

00:15:13 3 THE COURT: While you're taking a breath,
00:15:16 4 let me stop you for a moment. Take a breath. I think I
00:15:19 5 have the gist of what you're saying.

00:15:21 6 MS. BASSETT: I know what I want to say now.
00:15:22 7 I have it right here.

00:15:23 8 The TPD, they're trying to place an
00:15:25 9 allegation on me when it should be placed on the church
00:15:28 10 and whether the church is lawful. And because our
00:15:31 11 church is lawful, then we are allowed to provide
00:15:36 12 earth-based sacraments. And I think a really good
00:15:38 13 analogy would be the Catholic church during the time of
00:15:41 14 prohibition, that they were allowed to have their wine.
00:15:46 15 And there's many incidences like that that I've included
00:15:50 16 in the paperwork that I put in.

00:15:51 17 And I realize that I probably had no idea
00:15:53 18 what I was doing with this paperwork, and I'm just
00:15:56 19 giving it my best shot. And at some point I know I
00:15:59 20 probably need to find an attorney to help me with this.
00:16:01 21 But I was kind of under the gun, and I knew I needed to
00:16:04 22 put something in. Because right now I've got people in
00:16:07 23 my church that are getting sick because they don't have
00:16:09 24 their medicine, okay.

00:16:11 25 And I just want to put a stop to what the

00:16:12 1 police are doing. They came in; they're pointing the
00:16:15 2 finger at me. Confidential informant, I really feel
00:16:19 3 like he needs to get on the stand because I want to
00:16:21 4 question him about what he put in that warrant because
00:16:24 5 there's no way that that could be accurate. And to me
00:16:26 6 that really feels like -- really feels to me like the
00:16:33 7 statement of his facts is he's denying my secured right
00:16:35 8 of confronting the affidavit, and his obvious training
00:16:38 9 and lack of training because the warrant states that
00:16:40 10 Anyana-Kai is a registered Native American Church. Did
00:16:45 11 the warrant state that was personal papers and now I'm
00:16:48 12 here personally? We don't sell anything. We never sold
00:16:52 13 anything. We provide sacrament.

00:16:55 14 This entire situation is I'm being treated
00:16:58 15 like an illegal drug trader. The way they came in, what
00:17:01 16 they did to everybody. I wasn't even at the raid. Why
00:17:04 17 am I the one that's getting civil -- that they're trying
00:17:07 18 to prosecute, the Police Department wants to point a
00:17:10 19 finger at and say we can't have our medicine here; we're
00:17:13 20 going to bring dogs in, and you're going to go to jail,
00:17:17 21 and this type of stuff. These attacks are constantly
00:17:21 22 happening. And you stole my private property. And it's
00:17:25 23 germane to an illegal drug trade case.

00:17:27 24 Therefore, I require this Court to
00:17:28 25 immediately return my church property. And I'd like to

00:17:31 1 see my church property because that's very expensive
00:17:34 2 stuff. And you guys took stuff that wasn't even germane
00:17:37 3 to the situation. And I understand, and I'm probably a
00:17:42 4 little naive in the way I'm presenting all this, but I
00:17:45 5 was told by the head of my church that I need to explain
00:17:47 6 that we are a bona fide church. And the Utah case did
00:17:51 7 prove that you do not have to be on a reservation to
00:17:53 8 practice indigenous medicine, whether it be the service
00:17:57 9 or the ceremony. That was already established.

00:18:04 10 And again, the police came into our church
00:18:07 11 as if it were a drug house. And I really feel that I
00:18:11 12 need to have not a temporary but a permanent restraining
00:18:14 13 order and a federal injunction that says that they leave
00:18:17 14 us alone. Because it just -- it's unbelievable.

00:18:22 15 I have one more thing to say.

00:18:24 16 THE COURT: Take a breath.

00:18:25 17 MS. BASSETT: Okay.

00:18:26 18 THE COURT: Or a drink of water.

00:18:51 19 MS. BASSETT: So I was also appointed to ask
00:18:53 20 for a three-week continuance so I actually could maybe
00:18:57 21 get a case together in a proper order. Like I said,
00:19:01 22 this was all done under the gun, and I just gave it my
00:19:04 23 best shot the best I could. But I think I do probably
00:19:07 24 need a little bit of assistance here, and I probably
00:19:10 25 need three weeks to find somebody good and get them up

00:19:13 1 to speed because this is kind of an unusual situation.
00:19:16 2 I mean, if anybody in this court would go and see how we
00:19:18 3 practice Anyana-Kai they would know for a fact we are a
00:19:22 4 church. Even the police that came in the door said that
00:19:25 5 they didn't want to be there and that they were sorry.
00:19:27 6 And they came in saying that they were going to shut us
00:19:30 7 down, and they ended up not shutting us down and said as
00:19:33 8 long as you don't have marijuana or mushrooms here you
00:19:35 9 can keep your doors open because we like what you do.

00:19:39 10 And those mushrooms, I've seen changes in
00:19:43 11 some of the seekers that have been with me for, like,
00:19:46 12 ten or 11 years in one month of micro-dosing -- we don't
00:19:50 13 take it to get high. We take micro doses of this stuff.
00:19:53 14 And what it does is it changes their health
00:19:55 15 unbelievably. We also use it for ceremonies. So we use
00:19:59 16 it for services and ceremonies. And as a medicine woman
00:20:03 17 I am allowed to let people use earth-based sacraments in
00:20:07 18 whichever way I feel was necessary for their health in
00:20:10 19 cleansing them so that they can be ready for their
00:20:13 20 ceremony.

00:20:15 21 And the same thing with the cannabis. We
00:20:17 22 mainly use a raw non-psychoactive cannabis. That's the
00:20:21 23 one where we get the biggest amount of healing from.
00:20:24 24 You can't even get high from it. Children take it; it
00:20:27 25 stops their seizures. And this is our earth-based

00:20:31 1 medicines. That's what I want back, and that's what I'm
00:20:34 2 asking for today. I'm asking for a permanent
00:20:36 3 restraining order on the Toledo Police Department so I
00:20:39 4 can get back to my church, and I can get back to my
00:20:42 5 church business.

00:20:42 6 THE COURT: Thank you. Now let me now hear
00:20:44 7 from the Defendant.

00:20:47 8 MR. CHARLES: Good morning, Your Honor.
00:20:50 9 Thank you for your time.

00:20:51 10 And first of all, to answer your question,
00:20:55 11 your original question, which was whether or not the
00:20:58 12 preliminary injunction standard was correctly stated; I
00:21:01 13 think it was. We have no objection.

00:21:01 14 THE COURT: Keep your voice up.

00:21:10 15 MR. CHARLES: The preliminary injunction
00:21:12 16 standard was correct. But I have no objection to the
00:21:28 17 preliminary injunction standard that you mentioned on
00:21:30 18 the record.

00:21:31 19 And for the purposes of this hearing, we're
00:21:33 20 not opposed to -- we're not here to argue whether that's
00:21:38 21 a church. At some other point in the future that may be
00:21:43 22 germane.

00:21:43 23 Also I don't know if the Court would like to
00:21:47 24 consider the fact or maybe remind the Plaintiff that she
00:21:51 25 may be incriminating herself at this point in time

00:21:53 1 vis-à-vis some of her statements as to the usage of the
00:21:57 2 substances. I don't know if she wants to retain counsel
00:22:00 3 for that or not.

00:22:01 4 THE COURT: Well, I'll merely indicate for
00:22:05 5 the moment that the Plaintiff is not under oath.
00:22:06 6 There's no sworn statements here. This is arguments
00:22:09 7 that both sides are giving to assist the Court in
00:22:13 8 resolving the request and the papers that are filed.

00:22:18 9 Be that as it may, I would like to find out
00:22:21 10 what the status is of the warrant. Is there a related
00:22:25 11 lawsuit pending somewhere? And I assume that's a
00:22:29 12 public record. If you can identify that case for me and
00:22:35 13 what impact, if any, it may have on this proceeding.

00:22:40 14 MR. CHARLES: Currently, Your Honor, there's
00:22:41 15 an ongoing criminal investigation. It has not been
00:22:49 16 taken to the grand jury. The substances have been
00:22:53 17 tested, I believe, and I think Officer Bragg can testify
00:22:57 18 to that if need be. But they have been tested, and they
00:23:01 19 are positive for psilocybin and marijuana as well.
00:23:06 20 That's the status right now. And nobody was arrested,
00:23:10 21 Your Honor. But there is an ongoing investigation.
00:23:15 22 That's the status.

00:23:18 23 THE COURT: So there is an ongoing
00:23:21 24 investigation, but as of yet there is no related court
00:23:24 25 case, if you will?

00:23:25 1 MR. CHARLES: That's correct, Your Honor.

00:23:26 2 THE COURT: Thank you.

00:23:28 3 MS. BASSETT: May I say something?

00:23:30 4 THE COURT: Yes, you may.

00:23:31 5 MS. BASSETT: I object because once again
00:23:33 6 where I'm very unclear is how does Oklevueha Native
00:23:37 7 American Church become Charmaine Bassett? I wasn't even
00:23:40 8 there that day. Sergeant Bragg did tell me that he is
00:23:43 9 planning on putting federal charges on me. He told me
00:23:45 10 that personally.

00:23:46 11 THE COURT: Well, I'm not going to take
00:23:50 12 testimony today from either you or Mr. Bragg. I think
00:23:54 13 that is in your interest as much as anyone's.

00:24:03 14 Can the Defendant comment on what the
00:24:05 15 Plaintiff is arguing that this appears or there appears
00:24:08 16 to be a personal challenge to her as opposed to the
00:24:18 17 church itself? I am looking at the warrant. The
00:24:22 18 warrant has her name on there. The property that was
00:24:26 19 seized was at the church location, as I understand it.
00:24:31 20 But tell me, what I'm missing, if anything, in that
00:24:37 21 regard?

00:24:37 22 MR. CHARLES: I believe on the day the
00:24:39 23 warrant was executed there was a shop manager there. Is
00:24:39 24 that correct?

00:24:43 25 MR. BRAGG: That's correct.

00:24:43 1 MR. CHARLES: It was our understanding this
00:24:45 2 particular location is owned and controlled by the
00:24:47 3 Plaintiff; and therefore, the charges or investigation
00:24:52 4 is being conducted as to her as well as other
00:24:55 5 individuals, I believe.

00:24:57 6 THE COURT: And is the location also the
00:24:59 7 location of the church?

00:25:01 8 MR. CHARLES: That's correct, Your Honor.
00:25:04 9 It's right next to Bassett's on Secor there. I have a
00:25:10 10 photo of it, but I don't know how to produce it right
00:25:13 11 now.

00:25:13 12 THE COURT: Okay. I thank both sides for
00:25:22 13 their arguments and comments.

00:25:26 14 Let me address first and remind everyone of
00:25:32 15 the legal standard that I announced at the outset, those
00:25:36 16 four factors. That is what guides the Court's
00:25:38 17 determination at this point. And one of those factors
00:25:45 18 that I mentioned has to do with the merits of the case
00:25:50 19 and the likelihood of success. So let me address that
00:25:54 20 first.

00:25:55 21 As the City's brief argues, Laws of general
00:26:00 22 applicability, including criminal laws, do not violate
00:26:04 23 the free exercise clause. And that statement comes not
00:26:09 24 from me; it comes from the United States Supreme Court.
00:26:15 25 One such case is Employment Division, Department of

00:26:18 1 Human Resources of Oregon v. Smith. That's a 1990 case.
00:26:25 2 A quote from that case is as follows: "Respondents urge
00:26:30 3 us to hold quite simply that when otherwise prohibitible
00:26:34 4 conduct is accompanied by religious convictions, not
00:26:38 5 only the convictions, but the conduct itself must be
00:26:43 6 free from governmental regulation. We have never held
00:26:48 7 that and declined to so now."

00:26:52 8 This Court interprets the request by
00:26:54 9 plaintiff to be just that, and I am not going to step on
00:26:59 10 the toes of the U.S. Supreme Court holding.

00:27:03 11 I also refer everyone to the longtime case
00:27:08 12 of Reynolds v. United States, another Supreme Court case
00:27:13 13 from 1878. "Laws are made for the government of
00:27:19 14 actions, and while they cannot interfere with mere
00:27:22 15 religious beliefs and opinions, they may with
00:27:28 16 practices."

00:27:29 17 And that's really the short verse of the
00:27:32 18 complaint that's been raised today. The State of Ohio
00:27:35 19 is free to outlaw marijuana and psilocybin regardless of
00:27:43 20 whatever Plaintiff's church may believe. It appears to
00:27:46 21 me we have a valid search warrant. And if that search
00:27:51 22 warrant is invalid, it can be challenged if there is
00:27:56 23 another court action. And there is no legal basis for
00:28:00 24 me to issue an injunction or a temporary restraining
00:28:04 25 order.

00:28:05 1 The other factors under the law in our
00:28:09 2 Circuit for issuing a temporary restraining order sort
00:28:15 3 of follow suit. I find that there would not be an
00:28:19 4 irreparable injury absent a stay. I find -- I do not
00:28:24 5 find that granting the stay would cause substantial harm
00:28:27 6 to others, and the public interest would not be served
00:28:31 7 by granting the stay.

00:28:32 8 Indeed, if the merits of the action are not
00:28:36 9 well taken, the other factors frankly become a bit
00:28:41 10 secondary. But nonetheless, when I balance all those
00:28:45 11 factors, it seems fairly clear to me that it is not
00:28:49 12 appropriate for injunctive relief, which is the basis
00:28:53 13 for the complaint that was filed by the Plaintiff in
00:28:56 14 this case.

00:28:58 15 With respect to RFRA, which requires the
00:29:02 16 federal government to justify impositions on religious
00:29:06 17 rites, and that's applied under a strict scrutiny, that
00:29:11 18 does not apply to the states. That's a federal action.
00:29:16 19 And I refer to again the U.S. Supreme Court in the
00:29:21 20 Gonzalez case from 2006, which quotes from another case,
00:29:29 21 another Supreme Court case, an earlier case in 1997, the
00:29:35 22 Flores case, where the Court held the application of
00:29:39 23 RFRA to the states to be beyond the authority of
00:29:43 24 Congress.

00:29:44 25 And with respect to RLUIPA, as the City

00:29:50 1 notes in its brief, that applies to a narrow range of
00:29:54 2 regulations on prison inmates and land use, subjects
00:29:58 3 that are simply not relevant to the case here.

00:30:02 4 That leaves the U.N. Declaration, which
00:30:07 5 hardly bears mentioning, but that does not have
00:30:09 6 applicability here either.

00:30:12 7 So in short verse, I understand, Charmaine,
00:30:17 8 what you are saying here. I accept the fact that you
00:30:20 9 are a medicine woman, that you have a ceremony and
00:30:24 10 services, and you believe in earth-based sacraments.

00:30:29 11 You indicated in your statement here you
00:30:31 12 want to put a stop to police conduct, and you want a
00:30:36 13 return of your church property. That deals with the
00:30:38 14 warrant, which, at least what I've seen here, appears to
00:30:43 15 be appropriate. But that is ultimately a challenge you
00:30:46 16 can make, not in federal court, because I see no federal
00:30:51 17 basis. I specifically see no First Amendment right to
00:30:56 18 freedom of religion which is illegally, if you will,
00:31:03 19 trampled on by the warrant.

00:31:08 20 So I'm going to, for all these reasons, find
00:31:13 21 that the motion is not well taken. It is not supported.
00:31:17 22 I'm going to deny the Motion for Injunctive Relief.

00:31:22 23 With respect to the subsequent Motion to
00:31:24 24 Withdraw from the Court, I find that moot, whatever its
00:31:30 25 merits might be in light of the granting of the Motion

00:31:33 1 for Temporary Restraining Order.

00:31:36 2 And I note an additional basis for
00:31:39 3 dismissing this complaint, and that is the Toledo Police
00:31:43 4 Department is a named defendant. The Toledo Police
00:31:47 5 Department is not sui juris, that's s-u-i j-u-r-i-s, the
00:31:54 6 Latin phrase which in this case means someone or
00:31:57 7 something with full legal capacity to sue or be sued.

00:32:03 8 And I cite to the Lawson v. City of Youngstown case, 912
00:32:09 9 F.Supp. 2d, 527 at 531 from the Northern District of
00:32:16 10 Ohio in 2012. I think there is another entity that
00:32:20 11 might be appropriate that is sui juris, such as the City
00:32:26 12 of Toledo or some individual, perhaps. But the Toledo
00:32:30 13 Police Department does not stand in such a capacity.

00:32:34 14 MS. BASSETT: May I ask you something?

00:32:35 15 THE COURT: I'm not done. Yes, you may.

00:32:37 16 And so that is an additional reason for a
00:32:40 17 dismissal of this case.

00:32:45 18 MS. BASSETT: What happened to me asking for
00:32:48 19 three weeks?

00:32:48 20 THE COURT: Excuse me.

00:32:49 21 I think that I have covered the items raised
00:32:53 22 in the briefing.

00:32:54 23 The Plaintiff has requested, and it was not
00:32:58 24 something I had forgotten, a three-week continuance to
00:33:02 25 obtain counsel. And that may well be something you

00:33:05 1 should do, to obtain before you file something in court
00:33:09 2 the appropriate legal counsel. You are free to do that.
00:33:12 3 Given what I have before me, should you obtain counsel,
00:33:17 4 I suspect counsel would likely file a different type of
00:33:22 5 pleading. And I can't predict what the result of that
00:33:25 6 pleading might be, but, for example, there might be a
00:33:30 7 defendant named who is more appropriate to pursue with
00:33:34 8 your claim. There might be a different phrasing of the
00:33:37 9 complaint to not reference the claims you're making
00:33:42 10 here, specifically that you believe what was done here
00:33:45 11 was a violation of your freedom of religion. As I've
00:33:49 12 indicated, the Supreme Court case law is fairly clear on
00:33:52 13 that point. And frankly if you read the City's
00:33:56 14 opposition you might find other reasons why perhaps the
00:34:02 15 course that you chose was not the right course. Again,
00:34:04 16 I express no opinion on whether a different type of
00:34:08 17 pleading might result in a different result or a
00:34:11 18 different outcome. I don't know because I don't have
00:34:14 19 that document before me. But I do suggest you consult
00:34:18 20 with counsel. They may wish to file something
00:34:20 21 different, maybe even in a different court. I don't
00:34:24 22 know; it depends on the basis of the claims. But I
00:34:27 23 don't believe that a continuance can resurrect this
00:34:30 24 particular case. And I think it's best to start from a
00:34:34 25 clean slate. And I don't see, frankly, given the

00:34:37 1 voluminous filings that you've made, and you obviously
00:34:41 2 went to a lot of trouble, I don't even -- and I should
00:34:45 3 mention that in addition to the pleadings, attached to
00:34:48 4 them are numerous exhibits, some of which are relevant,
00:34:51 5 some of which aren't from a legal standpoint. But I've
00:34:55 6 taken a look at all of that. And if this is something
00:34:59 7 that you wish to pursue, Charmaine, I suggest you do
00:35:03 8 obtain legal counsel and get some legal advice on how
00:35:07 9 best to present your position. And maybe the lawyer
00:35:10 10 will tell you there is no good position for you to
00:35:13 11 pursue, or maybe he'll tell you there's a different way
00:35:17 12 to achieve the result that you're seeking. But again, I
00:35:20 13 have no comment on that. I think that the best route
00:35:22 14 for you is not a continuance with the paperwork that's
00:35:27 15 in front of me, but as I suggested a moment earlier, if
00:35:31 16 you wish to obtain legal counsel, and if that counsel
00:35:35 17 wants to file something, I suspect it will be something
00:35:38 18 that might be -- have a different focus, have some
00:35:43 19 different information, perhaps will address the four
00:35:48 20 factors that I indicated at the outset which guide me in
00:35:52 21 hearing a request for injunctive relief. But I leave
00:35:56 22 that to you and your lawyer, whoever he or she may be.

00:36:01 23 Now you certainly may ask any questions you
00:36:03 24 have.

00:36:03 25 MS. BASSETT: Well, it's kind of expensive

00:36:05 1 filing this stuff, so a continuance would also allow me
00:36:08 2 not to have to pay for another filing fee too.

00:36:11 3 THE COURT: Well, I don't know what your
00:36:12 4 financial status is, but you could have filed a request
00:36:15 5 for financial assistance when you filed your pro se
00:36:18 6 complaint. And your lawyer, if you get one and choose
00:36:21 7 to file, might ask for some type of relief like that as
00:36:25 8 well.

00:36:27 9 MS. BASSETT: So we can't -- I would prefer
00:36:30 10 to continue. I'm requesting that.

00:36:33 11 Also I'd like to see my stuff and see if
00:36:36 12 it's in good shape. They took come computers that have
00:36:39 13 nothing to do with cannabis or mushrooms that are
00:36:42 14 healing computers.

00:36:43 15 THE COURT: You're talking now about the
00:36:45 16 items that were seized by the City of Toledo?

00:36:47 17 MS. BASSETT: I would like to see them and
00:36:48 18 see that they're still in good shape. I would like to
00:36:50 19 see my property, at least see it.

00:36:52 20 THE COURT: I don't know if the City has a
00:36:54 21 position on that, but if so, can you give Charmaine what
00:36:56 22 you've done with her property? Is it in, quote-unquote,
00:37:01 23 good shape; and is it something she can look at without
00:37:05 24 disturbing it, if you will? I'll leave the City to
00:37:10 25 comment on that.

00:37:10 1 MS. BASSETT: I --

00:37:11 2 THE COURT: One moment. Let's hear what
00:37:12 3 their answer is.

00:37:13 4 MR. CHARLES: Your Honor, the property is
00:37:14 5 kept in the City of Toledo property room. I don't -- we
00:37:18 6 may be able to devise a way where she can look at it.
00:37:22 7 But the problem here is it's part of the investigation.
00:37:25 8 I'm not a detective, but I'm sure all the items seized
00:37:28 9 will be used in the ongoing investigation process, I
00:37:32 10 think.

00:37:32 11 THE COURT: So I think they will not allow
00:37:34 12 you to touch it. They may allow you, I'm hearing Mr.
00:37:38 13 Charles say, to see where it is so that you can satisfy
00:37:42 14 yourself it's there.

00:37:44 15 MS. BASSETT: But, I mean, the computer's
00:37:47 16 for biofeedback. There would be no reason for them to
00:37:50 17 keep that device. There's no information on it. It's a
00:37:52 18 program that's a biofeedback program that we actually
00:37:56 19 use for the seekers that are there. How does that have
00:37:58 20 anything to do with cannabis?

00:38:00 21 THE COURT: Well, I won't answer for the
00:38:02 22 City, but let me just say as a general statement if they
00:38:04 23 take something that they don't use, you may well have
00:38:08 24 the opportunity to have it returned. I can't say when.
00:38:11 25 But it seems to me it's an item that might be returned

00:38:14 1 to you if they find out it is not something that is
00:38:17 2 useful or pertinent to their investigation.

00:38:21 3 MS. BASSETT: So there is not going to be
00:38:23 4 any restraining order?

00:38:24 5 THE COURT: I'm afraid not.

00:38:25 6 MS. BASSETT: And you're not letting me
00:38:27 7 stand on my First Amendment right?

00:38:29 8 THE COURT: I tried to address that today.
00:38:30 9 The U.S. Supreme Court has spoken on that, and they say
00:38:33 10 the religious practice can be curtailed by law, and
00:38:38 11 that's what's happened here. And I'm sorry the result
00:38:44 12 is not more favorable for you, but that is my ruling
00:38:46 13 based on my understanding of the facts presented as well
00:38:49 14 as the law as I understand it.

00:38:51 15 MS. BASSETT: But the laws that -- some of
00:38:53 16 the laws that you were quoting were local laws. The
00:38:55 17 federal law says that --

00:38:57 18 THE COURT: Oh, no. Let me interrupt you.
00:38:59 19 I did not quote any local law. Every law I quoted was
00:39:03 20 federal law; U.S. Supreme Court or a decision from our
00:39:05 21 court in the Northern District of Ohio.

00:39:07 22 MS. BASSETT: What about the cases that we
00:39:09 23 have? The Mooney case where it says that you can
00:39:13 24 practice your religion off reservation. What about the
00:39:16 25 law that says it's only the individual and it's based on

00:39:18 1 sincerity? What about the churches' rights, the Wicca
00:39:21 2 church and the Flying Spaghetti Church; how do they get
00:39:25 3 federally recognized, and now you're telling me that I
00:39:27 4 can't stand on my First Amendment right? I'm a little
00:39:30 5 confused about that.

00:39:31 6 THE COURT: Charmaine, I didn't say you
00:39:32 7 weren't a church. I never said that. What I'm
00:39:35 8 balancing here is the right of your church and you to
00:39:37 9 practice certain ceremonies. You indicated you were a
00:39:42 10 medicine woman and you did certain beneficial rites with
00:39:47 11 the people of your church. And I understand that you
00:39:52 12 have those practices. I'm not saying that they aren't
00:39:54 13 your church practices. I'm saying that when they
00:39:57 14 conflict with the law, the U.S. Supreme Court has said
00:40:01 15 the law can find those practices to be illegal, that it
00:40:07 16 doesn't cloak you with immunity from the laws. You
00:40:11 17 can't separate your church from the civil laws of this
00:40:14 18 country. So that's what I'm saying.

00:40:17 19 And the cases that you cited, frankly, are
00:40:19 20 not really on point. I think the cases that I mentioned
00:40:23 21 are more on point, and some of the cases that were
00:40:25 22 included in the City of Toledo's brief as well. So I've
00:40:30 23 given you the best I can today.

00:40:32 24 I know you're not pleased, and I understand
00:40:34 25 that. You indicated you may want to consult with legal

00:40:38 1 counsel. I suggest you do so if that's what you want to
00:40:42 2 do. If you want to pursue this in some way, please do
00:40:45 3 consult with legal counsel, get their viewpoint on this.
00:40:49 4 You can even share with them what happened here today.
00:40:52 5 They may recommend you file, as I said, another suit, a
00:40:56 6 different suit in this court or another court. They may
00:40:59 7 tell you, Charmaine, you haven't got a good chance here.
00:41:02 8 They may tell you, Charmaine, you'd better wait until
00:41:05 9 the City of Toledo finishes its investigation. I don't
00:41:08 10 know what advice they're going to give you. I can't
00:41:11 11 give you that advice. I'm merely suggesting to you that
00:41:14 12 based on what is before me, both what you filed and what
00:41:17 13 the City has filed, my decision is that a temporary
00:41:22 14 restraining order or preliminary injunction would not be
00:41:25 15 appropriate.

00:41:25 16 MS. BASSETT: I just can't understand how
00:41:27 17 that's possible.

00:41:28 18 THE COURT: All the more reason for you to
00:41:29 19 contact a lawyer.

00:41:30 20 Anything further from either side?

00:41:32 21 MR. CHARLES: No, thank you, Your Honor.

00:41:33 22 THE COURT: If not, we are adjourned.

23 (Concluded at 9:52 a.m.)

24 - - -

25

C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled
matter.

/s/ Tracy L. McGurk_____

____9/21/16____

Tracy L. McGurk, RMR, CRR

Date

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